S.B. CIVIL WRIT PETITION NO.4009/2004

Rajendra Singh vs. Ratan Singh and others

Date : 27.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. B.R. Mehta, for the petitioner.

Mr. R.S. Chundawat, for the respondent no.1.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the orders of the two courts below. Order dated 6.8.2004 by which the trial court directed the petitioner to maintain status quo with respect to the property in dispute and the order dated 18.8.2004 by which, the appellate court, after considering the facts of the case, dismissed the appeal of the petitioner.

According to the learned counsel for the petitioner, the petitioner raised construction on the property in dispute. There is no roof over the construction. The petitioner wants to construct the roof over the property in dispute.

Learned counsel for the petitioner submits that the petitioner is ready to furnish undertaking that in case, the Court will decide against the petitioner, the petitioner will abide by the order of Court and

will remove the structures, if directed by the Court.

After going through the facts of the case, it appears that prima-facie the title of the property vest in mother of the plaintiff and defendant who died and thereafter, this dispute come up between the parties.

Looking to the entire facts, it appears that indulgence sought by the petitioner is nothing but a camouflage to keep the possession of the property where the petitioner could not have lived. Admittedly, the property in question was an open plot. May be because the petitioner under the claim of his share in the property or title of the property, raised some construction, but equity cannot tilt in his favour.

In view of the above, I do not find any reason to grant such treatment to the petitioner so that he may occupy the premises or may put someone in possession of the property by raising construction of certain room.

Consequently, this writ petition having no merit is hereby dismissed.

However, it is made clear that this Court has not made any observation on the merit of the suit in any manner either in favour of plaintiff or in favour of the defendant.

Looking to the dispute, it is expected that the trial court shall decide the suit expeditiously preferably within a period of six months.

A copy of the order be sent to the trial court.

(PRAKASH TATIA), J.

S.Phophaliya